

**REMARKS****Summary of Office Action**

As an initial matter, Applicants note with appreciation that the rejection under 35 U.S.C. § 112, second paragraph set forth in the previous Office Action has been withdrawn.

Claims 26-54 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Buisson, U.S. Patent No. 5,388,766 (hereafter "BUISSON") in view of WO 96/28132 in the form of its English language functional equivalent, U.S. Patent No. 6,607,733 to Diec et al. (hereafter "DIEC").

Claims 26-54 are rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-4, 6, 8 and 9 of DIEC in view of BUISSON.

Claims 26-54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-22 of co-pending application No. 10/819,781 in view of WO 96/28132.

Claims 26-54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claim 44 of co-pending application No. 10/892,159.

Claims 26-54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-38 and 45-48 of co-pending application No. 10/892,159 in view of BUISSON.

Claims 26-54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-29 of co-pending application No. 10/953,587 in view of BUISSON.

Response to Office Action

Withdrawal of the rejections of record is respectfully requested in view of the following remarks.

Response to Rejection of Claims under 35 U.S.C. § 103(a)

Claims 26-54, i.e., all claims of record, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BUISSON in view of WO 96/28132 in the form of its English language functional equivalent, DIEC. The rejection essentially alleges that BUISSON teaches a pump atomizer similar to the pump atomizer recited in the rejected claims and that BUISSON further teaches that the pump atomizer is for dispensing high viscosity fluid products such as, among other things, health and beauty care products. The rejection concedes that BUISSON does not teach that the high viscosity product is the oil-in-water emulsion antiperspirant composition recited in the rejected claims. In this regard, the rejection alleges that DIEC teaches a corresponding composition and that DIEC further teaches that cosmetic microemulsion deodorants can be dispensed from pump devices. The rejection further alleges that it would have been obvious to one of ordinary skill in the art to incorporate the composition of DIEC into the atomization system of BUISSON to arrive at the claimed invention.

Applicants respectfully traverse this rejection. Applicants submit that even if one were to assume, *arguendo*, that BUISSON teaches a pump atomizer similar to the pump atomizer recited in the rejected claims, BUISSON does not teach or suggest using this pump atomizer in combination with a microemulsion gel as recited in the present claims, let alone with an antiperspirant containing microemulsion gel.

Specifically, it is pointed out that BUISSON repeatedly and consistently uses the term “comparatively high(er) viscosity fluids” and similar terms when referring to products which can be dispensed (atomized) with the dispenser system disclosed therein. In this regard, the Abstract, col. 1, lines 6-14, col. 3, lines 28-33, col. 3, line 51 to col. 4, line 13, col. 6, lines 52-58 and claims 1(a) and 10(a) of BUISSON may, for example, be referred to. Claims 2 and 11 of BUISSON recite a product viscosity of at least about 30 cps.

Applicants point out that at col. 11, lines 3-15 BUISSON states (emphasis added):

The advantages of product delivery systems according to the present invention are particularly apparent when the viscosity of the product formulations is comparatively higher than, for example, such comparatively lower viscosity products which are substantially water-based and have viscosities between about 1 and about 10 cps. The term “comparatively higher viscosity”, as used herein, is therefore intended to refer to fluids having a viscosity of at least about 30 cps. Fluids having viscosities higher than about 30 cps, such as in the 60-75 cps range, have been found to perform successfully with product delivery systems according to the present invention.

The above passage of BUISSON makes it clear to one of ordinary skill in the art which type of fluids of “comparatively higher viscosity” may successfully be dispensed (atomized) with the delivery system disclosed therein, i.e., products having viscosities of at least about 30 cps and up to 75 cps (or even somewhat higher than that). However, by normal standards, products having a viscosity of 75 cps are not particularly viscous at all.

Reproduced below are two tables downloaded from the Internet which illustrate the fact that even products which one would normally consider to be of moderate viscosity (such as, e.g., maple syrup or glycerin) have viscosities which are much higher than 75 cps, the highest value mentioned by BUISSON.

VISCOSITY: A measure of the resistance of a fluid to flow (usually through a specific orifice).	
THIXOTROPIC: Describes materials that are gel-like at rest but fluid when agitated	
CENTIPOISE: Water is the standard at 1 cps.	
MATERIAL	APPROXIMATE VISCOSITY (in centipoise)
Water @ 70 F	1 to 5
Blood or Kerosene	10
Anti-Freeze or Ethylene Glycol	15
Motor Oil SAE10 or Mazola Corn Oil	50 to 100
Motor Oil SAE30 or Maple Syrup	150 to 200
Motor Oil SAE40 or Castor Oil	250 to 500
Motor Oil SAE60 or Glycerin	1,000 to 2,000
Karo Corn Syrup or Honey	2,000 to 3,000
Blackstrap Molasses	5,000 to 10,000
Hershey Chocolate Syrup	10,000 to 25,000
Heinz Ketchup or French's Mustard	50,000 to 70,000
Tomato Paste or Peanut Butter	150,000 to 250,000
Crisco Shortening or Lard	1,000,000 to 2,000,000
Caulking Compound	5,000,000 to 10,000,000
Window Putty	100,000,000

See:

<http://www.resintechgroup.com/tables/viscosity.html>

Approximate Viscosities of Common Materials (At Room Temperature-70°F) *	
Material	Viscosity in Centipoise
Water	1 cps
Milk	3 cps
SAE 10 Motor Oil	85-140 cps

SAE 20 Motor Oil	140-420 cps
SAE 30 Motor Oil	420-650 cps
SAE 40 Motor Oil	650-900 cps
Castrol Oil	1,000 cps
Karo Syrup	5,000 cps
Honey	10,000 cps
Chocolate	25,000 cps
Ketchup	50,000 cps
Mustard	70,000 cps
Sour Cream	100,000 cps
Peanut Butter	250,000 cps

See:

<http://www.vp-scientific.com/Viscosity Tables.htm>

The values listed in the above tables are consistent with the disclosure of BUISSON. For example, according to col. 10, lines 40-48 of BUISSON products which are formulated with a large percentage of vegetable oil (80-100 %) “have viscosities typically of between about 60 and about 75 cps”. Mazola Corn Oil is listed in the first table as having a viscosity of from 50 to 100 cps.

In view of the foregoing, it is not surprising that the only specific cosmetic products mentioned in BUISSON for use in combination with the dispensing system disclosed therein are relatively low viscosity liquids, i.e., hair sprays. Even the other products listed in the last paragraph of col. 10 of BUISSON are not necessarily relatively viscous liquids, and in view of the product viscosities set forth by BUISSON one of ordinary skill in the art will understand that embodiments of these products which are suitable for use with the dispensing system disclosed therein are those with a relatively moderate viscosity of not higher than, say, about 100 cps.

At any rate, in view of the facts set forth above there is no reason for one of ordinary skill in the art to assume that a product with a considerably higher viscosity than a vegetable oil (such as a microemulsion gel) can be successfully dispensed with the dispensing system of BUISSON. In other words, in the case of a microemulsion gel, there would be no expectation of success.

As already set forth in response to the previous Office Action, DIEC does not cure the deficiencies of BUISSON and likewise fails to teach or suggest that it is possible to dispense and atomize the microemulsion gel products disclosed in DIEC by the dispensing system of BUISSON.

Applicants note that the Examiner takes the position that the fact that the “normal bottles and containers” which are mentioned in DIEC as the only application devices for microemulsion gels “can be interpreted as meaning dispensers that are known and routinely used in the art” (see section 53 at page 14 of the present Office Action). If this interpretation were correct, it remains to be asked why in the same paragraph (col. 26, lines 53-59) DIEC mentions also aerosol containers, squeeze bottles and pump devices, but not as application means for microemulsion gels. Under the definition adopted by the Examiner, aerosol containers, squeeze bottles and pump devices would apparently also qualify as “normal bottles and containers”.

Applicants further note that in the Examiner’s opinion it is possible that the inventors of DIEC “did not appreciate that the more viscous formulations, such as the gels, could be dispensed from pump devices” (section 53 of the present Office Action). However, the inventors of DIEC would appear to qualify as people of ordinary skill in the

art, which supports Applicants' position that the present invention was not obvious to one of ordinary skill in the art at the time the present application was filed.

Applicants submit that for at least all of the foregoing reasons, BUISSON in view of WO 96/28132 fails to render obvious the subject matter of any of the present claims, wherefore withdrawal of the rejection under 35 U.S.C. § 103(a) is warranted and respectfully requested.

Response to Nonstatutory Obviousness-Type Double Patenting Rejection

Claims 26-54 are rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-4, 6, 8 and 9 of DIEC in view of BUISSON.

Applicants traverse this rejection for the same reasons as those which are set forth above with respect to the rejection under 35 U.S.C. § 103(a) over BUISSON in view of WO 96/28132 (which is the functional equivalent of DIEC), which reasons are incorporated herein in their entirety, and respectfully request withdrawal of this rejection.

Response to Provisional Nonstatutory Obviousness-Type Double Patenting Rejections

Claims 26-54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable (1) over claims 1-22 of co-pending application No. 10/819,781 in view of WO 96/28132, (2) over claim 44 of co-pending application No. 10/892,159, (3) over claims 1-38 and 45-48 of co-pending

application No. 10/892,159 in view of BUISSON, and (4) over claims 1-29 of co-pending application No. 10/953,587 in view of BUISSON.

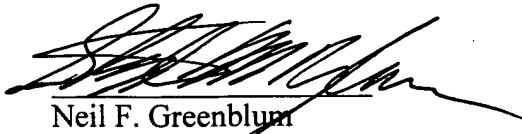
Applicants respectfully traverse the above provisional rejections (3) and (4) for the same reasons as those which are set forth above with respect to the rejection under 35 U.S.C. § 103(a) over BUISSON in view of WO 96/28132 (which is the functional equivalent of DIEC), which reasons are incorporated herein in their entireties, and respectfully request withdrawal of these rejections.

Regarding the above provisional rejections (1) and (2), Applicants respectfully request that these rejections be held in abeyance until allowable subject matter has been indicated in the present application. Applicants will then be in a position to decide whether it is necessary to file terminal disclaimers in the present application.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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